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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 433

WILLIAM E. LAMB, *Petitioner,*

vs.

WILLIAM A. SCHMITT, RECEIVER, *Respondent.*

REPLY OF PETITIONER TO RESPONDENT'S STATEMENT OF FACTS AND BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

October 23, 1931.

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May It Please the Court:

Respondent's reply admits (p. 5) that at the time and place of service petitioner was a non-resident in attendance upon the district court as an attorney of record and as a respondent in a contempt proceeding, and does not deny that these were the sole reasons for his presence in the district at that time. Under the decisions of this Court no other questions of fact are open to inquiry on the issue involved in this case, and

the single fact necessary to entitle petitioner to immunity is thus established.

Page Co. v. Macdonald, 261 U. S. 446.
Stewart v. Ramsay, 242 U. S. 128.

The Court of Appeals went beyond this issue. It deprived petitioner of immunity because it did not confine the inquiry to the only pertinent question of fact involved but rested its decision solely upon a consideration of the nature and merits of the cause of action pleaded. In so doing that court has rendered a decision which is in conflict with decisions of this court and has nullified a rule which this court holds is founded upon the very necessities of judicial administration.

Page Co. v. Macdonald, 261 U. S. 446.
Stewart v. Ramsay, 242 U. S. 128.

Respondent's reply follows the decision of the Court of Appeals. It merely reviews what are erroneously assumed to be the merits of the case pleaded.

Every argument advanced by respondent is based upon the assertion, made on page 11, that in determining petitioner's right to immunity the allegations of the bill of complaint in this case must be taken as true. The assertion is made notwithstanding this court has expressly held that the allegations of the bill cannot be assumed to be true.

Page Co. v. Macdonald, 261 U. S. 446.

Building solely upon this assumption respondent directs his arguments toward showing that since the bill

alleges that, by its decree in No. 129, the District Court took jurisdiction *in rem* of the entire estate of Florence T. Holland, the record discloses a conflict between the rule of immunity from process and the rule that a federal court, having once acquired jurisdiction *in rem* of specific property, withdraws that specific property from the jurisdiction of every other court so far as it is necessary to accomplish the purpose of the suit (pp. 9-11). The alleged conflict is immaterial because it is dependent upon the assumption that allegations of the bill of complaint are true. Furthermore the alleged conflict does not exist. The rule of exclusive jurisdiction, which is merely a rule for determining priority of jurisdiction *in rem* of specific property as between different courts, has no application in this case because, even admitting for the sake of argument, respondent's unfounded assumption that the district court, at some time, had jurisdiction *in rem*, of the money paid to petitioner as attorneys' fees in No. 129, respondent's own evidence introduced on the motion, shows conclusively that even if it could be held that the district court had acquired jurisdiction over the fees paid to petitioner, such jurisdiction had been relinquished by it, with the approval of plaintiff and all interveners in No. 129, who are respondents in No. 432 in this court, on the same day the bill in this case was filed. Respondent introduced, on the motion in this case, the decree entered in No. 129, an affidavit of one of his counsel, and the record in the contempt proceeding involved in No. 432. The first shows that No. 129 was terminated by a consent decree providing that it was *without prejudice* to petitioner (R. 93, 94). In the second, counsel solemnly swears not only that No. 129 was terminated by a

consent decree containing a provision that it should be without prejudice to petitioner, but also that the consent decree represented a voluntary compromise and settlement of No. 129 between the parties thereto after a week's negotiation, and that it was expressly submitted to and approved by the court merely as a settlement of the case (R. 140-145). It was thus a mere expression of the will of the parties and not a judgment of the court.

Hodgson v. Vroom, 266 Fed. 267.

The third shows that No. 129 was settled, and the consent decree providing that it should be without prejudice to petitioner, was entered, on April 30, 1930, which was after all parties and attorneys in cause No. 129 had full knowledge of the receipt by petitioner of the fees sought to be recovered in this cause (R. 94). Thus, while the question is not material on the issues involved, except to show the wisdom of the rule precluding consideration of the merits on a motion of the kind made in this case, it is apparent that the alleged conflict does not and did not exist at the time the judgment of the district court was entered, even if the merits are considered.

Respondent's attempted distinctions between this case and *Page Co. v. Macdonald,* 261 U. S. 446; *Stewart v. Ramsay,* 242 U. S. 128; and *Durst v. Tautges, Wilder & McDonald,* 44 Fed. (2d) 507, are also based solely upon the assumption that the allegations of the bill are true. It is claimed first, that the cause of action in this case is also involved in the summary proceeding for contempt in No. 432, whereas no such situation existed in the cases cited (p. 8), and, second,

that if immunity is granted in this case non-resident attorneys can with impunity decamp with property in the process of being seized by a district court (pp. 11, 12). Since the alleged distinctions are based upon assumptions involving the merits of the case, they are immaterial.

Furthermore, even if the merits of this case could be considered, the distinctions are immaterial. If petitioner had interfered with the custody of the court in No. 129, which he had not, the only remedy authorized by orderly procedure was the contempt proceeding brought against him in that case. The court of appeals had no jurisdiction to deprive him of immunity from the process in this case as punishment for an alleged contempt of court committed in No. 129.

Hovey v. Elliott, 167 U. S. 409.
Ex Parte Robinson, 86 U. S. 505.

Respondent also argues that the writ of certiorari should not issue because the judgment of the court of appeals is interlocutory. Section 347, Title 28, U. S. Code is clear on this point. The Court has jurisdiction to issue the writ of certiorari at any time and it has repeatedly done so to review interlocutory orders.

A case directly in point is *Morris & Co. v. Skandinavia Insurance Co.,* 279 U. S. 405.

Among other cases where interlocutory orders have been reviewed on certiorari are:

Forsyth v. Hammond, 166 U. S. 506.
Spiller v. Atchison, Topeka & Santa Fe Ry. Co., 253 U. S. 117.
United States v. Gulf Refining Co., 262 U. S. 738.

Geo. A. Fuller Co. v. Otis Elevator Co., 245 U. S. 489.

Respondent also argues that the question presented by this petition is not of general importance. This court has held that the rule of immunity from process while attending court in a foreign jurisdiction is founded upon the very necessities of judicial administration and that in the very nature of the case its application can not depend upon the nature or merits of the cause of action pleaded.

Stewart v. Ramsay, 242 U. S. 128.
Page Co. v. Macdonald, 261 U. S. 446.

It is submitted that an issue involving a privilege founded in the very necessities of judicial administraton is of the utmost general importance. The facts requiring the granting of immunity in this case are not controverted. The decision of the court of appeals is directly and fundamentally contrary to the decisions of this court. If the decision of the court of appeals is adopted the rule of immunity is worthless because it will no longer serve the purpose for which it was intended. The question presented is therefore of the same order of importance as the rule itself.

It is respectfully submitted that the reply assumes the only point involved and thus contributes nothing toward its determination.

Respectfully submitted,

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October 23, 1931.